

111TH CONGRESS
1ST SESSION

S. 1031

To amend the Public Health Service Act to establish direct care registered nurse-to-patient staffing ratio requirements in hospitals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 13, 2009

Mrs. BOXER introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act to establish direct care registered nurse-to-patient staffing ratio requirements in hospitals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Nursing
5 Shortage Reform and Patient Advocacy Act”.

6 **SEC. 2. MINIMUM DIRECT CARE REGISTERED NURSE**
7 **STAFFING REQUIREMENTS.**

8 (a) MINIMUM DIRECT CARE REGISTERED NURSE
9 STAFFING REQUIREMENTS.—The Public Health Service

1 Act (42 U.S.C. 201 et seq.) is amended by adding at the
 2 end the following new title:

3 **“TITLE XXXI—MINIMUM DIRECT**
 4 **CARE REGISTERED NURSE**
 5 **STAFFING REQUIREMENTS**

6 **“SEC. 3101. MINIMUM NURSE STAFFING REQUIREMENTS.**

7 “(a) STAFFING PLAN.—

8 “(1) IN GENERAL.—A hospital shall implement
 9 a staffing plan that—

10 “(A) provides adequate, appropriate, and
 11 quality delivery of health care services and pro-
 12 tects patient safety; and

13 “(B) is consistent with the requirements of
 14 this title.

15 “(2) EFFECTIVE DATES.—

16 “(A) IMPLEMENTATION OF STAFFING
 17 PLAN.—Subject to subparagraph (B), the re-
 18 quirements under paragraph (1) shall take ef-
 19 fect not later than 1 year after the date of en-
 20 actment of this title.

21 “(B) APPLICATION OF MINIMUM DIRECT
 22 CARE REGISTERED NURSE-TO-PATIENT RA-
 23 TIOS.—The requirements under subsection (b)
 24 shall take effect as soon as practicable, as de-
 25 termined by the Secretary, but not later than 2

1 years after the date of enactment of this title,
 2 or in the case of a hospital in a rural area (as
 3 defined in section 1886(d)(2)(D) of the Social
 4 Security Act), not later than 4 years after the
 5 date of enactment of this title.

6 “(b) MINIMUM DIRECT CARE REGISTERED NURSE-
 7 TO-PATIENT RATIOS.—

8 “(1) IN GENERAL.—Except as otherwise pro-
 9 vided in this section, a hospital’s staffing plan shall
 10 provide that, at all times during each shift within a
 11 unit of the hospital, a direct care registered nurse
 12 shall be assigned to not more than the following
 13 number of patients in that unit, subject to para-
 14 graph (4):

15 “(A) 1 patient in trauma emergency units.

16 “(B) 1 patient in operating room units,
 17 provided that a minimum of 1 additional person
 18 serves as a scrub assistant in such unit.

19 “(C) 2 patients in critical care units, in-
 20 cluding neonatal intensive care units, emer-
 21 gency critical care and intensive care units,
 22 labor and delivery units, coronary care units,
 23 acute respiratory care units, postanesthesia
 24 units, and burn units.

1 “(D) 3 patients in emergency room units,
 2 stepdown units, pediatrics units, telemetry
 3 units, and combined labor, delivery, and
 4 postpartum units.

5 “(E) 4 patients in antepartum units, inter-
 6 mediate care nursery units, psychiatric units,
 7 and other specialty care units.

8 “(F) 5 patients in medical-surgical units,
 9 rehabilitation units, and skilled nursing units.

10 “(G) 8 patients in well-baby nursery units
 11 and postpartum (4 couplets) units.

12 “(2) SIMILAR UNITS WITH DIFFERENT
 13 NAMES.—The Secretary may apply minimum direct
 14 care registered nurse-to-patient ratios established in
 15 paragraph (1) to a type of hospital unit not referred
 16 to in such paragraph if such other unit performs a
 17 function similar to the function performed by the
 18 unit referred to in such paragraph.

19 “(3) RESTRICTIONS.—

20 “(A) PROHIBITION AGAINST AVERAGING.—
 21 A hospital shall not average the number of pa-
 22 tients and the total number of direct care reg-
 23 istered nurses assigned to patients in a hospital
 24 unit during any 1 shift or over any period of

1 time for purposes of meeting the requirements
2 under this subsection.

3 “(B) PROHIBITION AGAINST IMPOSITION
4 OF MANDATORY OVERTIME REQUIREMENTS.—A
5 hospital shall not impose mandatory overtime
6 requirements to meet the hospital unit direct
7 care registered nurse-to-patient ratios required
8 under this subsection.

9 “(C) RELIEF DURING ROUTINE AB-
10 SENCES.—A hospital shall ensure that only a
11 direct care registered nurse may relieve another
12 direct care registered nurse during breaks,
13 meals, and other routine, expected absences
14 from a hospital unit.

15 “(D) PROHIBITION AGAINST IMPOSITION
16 OF LAY-OFFS.—A hospital shall not impose lay-
17 offs of licensed vocational or practical nurses,
18 licensed psychiatric technicians, certified nurs-
19 ing assistants, or other ancillary staff to meet
20 the hospital unit direct care registered nurse-to-
21 patient ratios required under this subsection.

22 “(4) ADJUSTMENT OF RATIOS.—

23 “(A) IN GENERAL.—If necessary to protect
24 patient safety, the Secretary may prescribe reg-
25 ulations that—

1 “(i) increase minimum direct care reg-
2 istered nurse-to-patient ratios under this
3 subsection to further limit the number of
4 patients that may be assigned to each di-
5 rect care nurse; or

6 “(ii) add minimum direct care reg-
7 istered nurse-to-patient ratios for units not
8 referred to in paragraphs (1) and (2).

9 “(B) CONSULTATION.—Such regulations
10 shall be prescribed after consultation with af-
11 fected hospitals and registered nurses.

12 “(5) NO PREEMPTION OF CERTAIN STATE-IM-
13 POSED RATIOS.—Nothing in this title shall preempt
14 State standards that the Secretary determines to be
15 at least equivalent to Federal requirements for a
16 staffing plan established under this title. Minimum
17 direct care registered nurse-to-patient ratios estab-
18 lished under this subsection shall not preempt State
19 requirements that the Secretary determines are at
20 least equivalent to Federal requirements for a staff-
21 ing plan established under this title.

22 “(6) EXEMPTION IN EMERGENCIES.—The re-
23 quirements established under this subsection shall
24 not apply during a declared state of emergency if a
25 hospital is requested or expected to provide an ex-

1 ceptional level of emergency or other medical serv-
 2 ices.

3 “(c) DEVELOPMENT AND REEVALUATION OF STAFF-
 4 ING PLAN.—

5 “(1) CONSIDERATIONS IN DEVELOPMENT OF
 6 PLAN.—In developing the staffing plan, a hospital
 7 shall provide for direct care registered nurse-to-pa-
 8 tient ratios above the minimum direct care reg-
 9 istered nurse-to-patient ratios required under sub-
 10 section (b) if appropriate based upon consideration
 11 of the following factors:

12 “(A) The number of patients and acuity
 13 level of patients as determined by the applica-
 14 tion of an acuity system (as defined in section
 15 3107(1)), on a shift-by-shift basis.

16 “(B) The anticipated admissions, dis-
 17 charges, and transfers of patients during each
 18 shift that impacts direct patient care.

19 “(C) Specialized experience required of di-
 20 rect care registered nurses on a particular unit.

21 “(D) Staffing levels and services provided
 22 by other health care personnel in meeting direct
 23 patient care needs not required by a direct care
 24 registered nurse.

1 “(E) The level of technology available that
2 affects the delivery of direct patient care.

3 “(F) The level of familiarity with hospital
4 practices, policies, and procedures by temporary
5 agency direct care registered nurses used dur-
6 ing a shift.

7 “(G) Obstacles to efficiency in the delivery
8 of patient care presented by physical layout.

9 “(2) DOCUMENTATION OF STAFFING.—A hos-
10 pital shall specify the system used to document ac-
11 tual staffing in each unit for each shift.

12 “(3) ANNUAL REEVALUATION OF PLAN AND
13 ACUITY SYSTEM.—

14 “(A) IN GENERAL.—A hospital shall annu-
15 ally evaluate—

16 “(i) its staffing plan in each unit in
17 relation to actual patient care require-
18 ments; and

19 “(ii) the accuracy of its acuity system.

20 “(B) UPDATE.—A hospital shall update its
21 staffing plan and acuity system to the extent
22 appropriate based on such evaluation.

23 “(4) TRANSPARENCY.—

24 “(A) IN GENERAL.—Any acuity-based pa-
25 tient classification system adopted by a hospital

under this section shall be transparent in all respects, including disclosure of detailed documentation of the methodology used to predict nursing staffing, identifying each factor, assumption, and value used in applying such methodology.

“(B) PUBLIC AVAILABILITY.—The Secretary shall establish procedures to provide that the documentation submitted under subsection (e) is available for public inspection in its entirety.

“(5) REGISTERED NURSE PARTICIPATION.—A staffing plan of a hospital shall be developed and subsequent reevaluations shall be conducted under this subsection on the basis of input from direct care registered nurses at the hospital or, where such nurses are represented through collective bargaining, from the applicable recognized or certified collective bargaining representative of such nurses. Nothing in this title shall be construed to permit conduct prohibited under the National Labor Relations Act or under the Federal Labor Relations Act.

“(d) ACUITY TOOL.—

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of the National Nursing

1 Shortage Reform and Patient Advocacy Act, the
 2 Secretary shall develop a national acuity tool that
 3 provides a method for establishing nurse staffing re-
 4 quirements above the hospital unit direct care reg-
 5 istered nurse-to-patient ratios required under sub-
 6 section (b).

7 “(2) IMPLEMENTATION.—Each hospital shall
 8 adopt and implement the national acuity tool de-
 9 scribed in paragraph (1), and provide staffing based
 10 on such tool. Any additional direct care registered
 11 nursing staffing above the hospital unit direct care
 12 registered nurse-to-patient ratios described in sub-
 13 section (b) shall be assigned in a manner determined
 14 by such national acuity tool.

15 “(e) SUBMISSION OF PLAN TO SECRETARY.—A hos-
 16 pital shall submit to the Secretary its staffing plan re-
 17 quired under subsection (a)(1) and any annual updates
 18 under subsection (c)(3)(B).

19 **“SEC. 3102. POSTING, RECORDS, AND AUDITS.**

20 “(a) POSTING REQUIREMENTS.—In each unit, a hos-
 21 pital shall post a uniform notice in a form specified by
 22 the Secretary in regulation that—

23 “(1) explains requirements imposed under sec-
 24 tion 3101;

1 “(2) includes actual direct care registered
2 nurse-to-patient ratios during each shift; and

3 “(3) is visible, conspicuous, and accessible to
4 staff, patients, and the public.

5 “(b) RECORDS.—

6 “(1) MAINTENANCE OF RECORDS.—Each hos-
7 pital shall maintain accurate records of actual direct
8 care registered nurse-to-patient ratios in each unit
9 for each shift for no less than 2 years. Such records
10 shall include—

11 “(A) the number of patients in each unit;

12 “(B) the identity and duty hours of each
13 direct care registered nurse assigned to each
14 patient in each unit in each shift; and

15 “(C) a copy of each notice posted under
16 subsection (a).

17 “(2) AVAILABILITY OF RECORDS.—Each hos-
18 pital shall make its records maintained under para-
19 graph (1) available to—

20 “(A) the Secretary;

21 “(B) registered nurses and their collective
22 bargaining representatives (if any); and

23 “(C) the public under regulations estab-
24 lished by the Secretary, or in the case of a fed-
25 erally operated hospital, under section 552 of

1 title 5, United States Code (commonly known
2 as the ‘Freedom of Information Act’).

3 “(c) AUDITS.—The Secretary shall conduct periodic
4 audits to ensure—

5 “(1) implementation of the staffing plan in ac-
6 cordance with this title; and

7 “(2) accuracy in records maintained under this
8 section.

9 **“SEC. 3103. MINIMUM DIRECT CARE LICENSED PRACTICAL**
10 **NURSE STAFFING REQUIREMENTS.**

11 “(a) ESTABLISHMENT.—A hospital’s staffing plan
12 shall comply with minimum direct care licensed practical
13 nurse staffing requirements that the Secretary establishes
14 for units in hospitals. Such staffing requirements shall be
15 established not later than 18 months after the date of en-
16 actment of this title, and shall be based on the study con-
17 ducted under subsection (b).

18 “(b) STUDY.—Not later than 1 year after the date
19 of enactment of this title, the Secretary, acting through
20 the Director of the Agency for Healthcare Research and
21 Quality, shall complete a study of licensed practical nurse
22 staffing and its effects on patient care in hospitals. The
23 Director may contract with a qualified entity or organiza-
24 tion to carry out such study under this paragraph. The
25 Director shall consult with licensed practical nurses and

1 organizations representing licensed practical nurses re-
 2 garding the design and conduct of the study.

3 “(c) APPLICATION OF REGISTERED NURSE PROVI-
 4 SIONS TO LICENSED PRACTICAL NURSE STAFFING RE-
 5 QUIREMENTS.—Paragraphs (2), (4), (5)(A), and (6) of
 6 section 3101(b), section 3101(c), and section 3102 shall
 7 apply to the establishment and application of direct care
 8 licensed practical nurse staffing requirements under this
 9 section in the same manner that they apply to the estab-
 10 lishment and application of direct care registered nurse-
 11 to-patient ratios under sections 3101 and 3102.

12 “(d) EFFECTIVE DATE.—The requirements of this
 13 section shall take effect as soon as practicable, as deter-
 14 mined by the Secretary, but not later than 2 years after
 15 the date of enactment of this title, or in the case of a
 16 hospital in a rural area (as defined in section
 17 1886(d)(2)(D) of the Social Security Act), not later than
 18 4 years after the date of enactment of this title.

19 **“SEC. 3104. FEDERAL ASSISTANCE FOR THE PURCHASE OF**
 20 **SAFE PATIENT HANDLING EQUIPMENT.**

21 “(a) IN GENERAL.—The Secretary shall establish a
 22 grant program to provide financial assistance to cover
 23 some or all of the costs of purchasing safe patient han-
 24 dling equipment required by the Federal safe patient han-
 25 dling standard, developed under section 3 of the National

1 Nursing Shortage Reform and Patient Advocacy Act, for
 2 health care facilities, such as hospitals, nursing facilities,
 3 and outpatient facilities, that—

4 “(1) require such equipment in order to comply
 5 with the standards established under section 3 of the
 6 National Nursing Shortage Reform and Patient Ad-
 7 vocacy Act; and

8 “(2) demonstrate the financial inability to oth-
 9 erwise afford the purchase of such equipment.

10 “(b) APPLICATION.—A health care facility desiring a
 11 grant under this section shall submit to the Secretary an
 12 application—

13 “(1) in such form and manner as the Secretary
 14 shall specify; and

15 “(2) demonstrating true financial need, accord-
 16 ing to a standard established by the Secretary.

17 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
 18 are authorized to be appropriated to be used for grant
 19 awards under this section \$50,000,000 for fiscal year
 20 2010, which shall remain available until expended.

21 **“SEC. 3105. WHISTLEBLOWER AND PATIENT PROTECTIONS.**

22 “(a) RECOGNITION OF DUTY AND RIGHT OF NURSES
 23 TO ADVOCATE IN THE EXCLUSIVE INTEREST OF THE PA-
 24 TIENT.—A nurse shall have the right to act as the pa-
 25 tient’s advocate, as circumstances require, by—

1 “(1) initiating action to improve health care or
2 to change decisions or activities which, in the profes-
3 sional judgment of the nurse, are against the inter-
4 ests and wishes of the patient; and

5 “(2) giving the patient an opportunity to make
6 informed decisions about health care before it is pro-
7 vided.

8 “(b) REFUSAL OF ASSIGNMENT.—A nurse may
9 refuse to accept an assignment as a nurse in a hospital
10 if—

11 “(1) the assignment would violate section 3101
12 or 3103; or

13 “(2) the nurse is not prepared by education,
14 training, or experience to fulfill the assignment with-
15 out compromising the safety of any patient or jeop-
16 ardizing the license of the nurse.

17 “(c) RETALIATION FOR REFUSAL OF ASSIGNMENT
18 BARRED.—

19 “(1) NO DISCHARGE, DISCRIMINATION, OR RE-
20 TALIATION.—No hospital shall discharge, discrimi-
21 nate, or retaliate in any manner with respect to any
22 aspect of employment (as defined in section
23 3107(5)), including discharge, promotion, compensa-
24 tion, or terms, conditions, or privileges of employ-

1 ment against a nurse based on the nurse’s refusal of
2 a work assignment under subsection (b).

3 “(2) NO FILING OF COMPLAINT.—No hospital
4 shall file a complaint or a report against a nurse
5 with the appropriate State professional disciplinary
6 agency because of the nurse’s refusal of a work as-
7 signment described in subsection (b).

8 “(d) CAUSE OF ACTION.—Any nurse who has been
9 discharged, discriminated against, or retaliated against in
10 violation of subsection (c)(1) or against whom a complaint
11 has been filed in violation of subsection (c)(2) may bring
12 a cause of action in a United States district court. A nurse
13 who prevails on the cause of action shall be entitled to
14 one or more of the following:

15 “(1) Reinstatement.

16 “(2) Reimbursement of lost wages, compensa-
17 tion, and benefits.

18 “(3) Attorneys’ fees.

19 “(4) Court costs.

20 “(5) Other damages.

21 “(e) COMPLAINT TO SECRETARY.—

22 “(1) IN GENERAL.—A nurse, patient, or other
23 individual may file a complaint with the Secretary
24 against a hospital that violates the provisions of this
25 title. For any complaint filed, the Secretary shall—

1 “(A) receive and investigate the complaint;

2 “(B) determine whether a violation of this

3 title as alleged in the complaint has occurred;

4 and

5 “(C) if such a violation has occurred, issue

6 an order that the complaining nurse or indi-

7 vidual shall not suffer any retaliation described

8 in subsection (c) or subsection (g).

9 “(f) TOLL-FREE TELEPHONE NUMBER.—

10 “(1) IN GENERAL.—The Secretary shall provide

11 for the establishment of a toll-free telephone hotline

12 to provide information regarding the requirements

13 under section 3101 and to receive reports of viola-

14 tions of such section.

15 “(2) NOTICE TO PATIENTS.—A hospital shall

16 provide each patient admitted to the hospital for in-

17 patient care with the hotline described in paragraph

18 (1), and shall give notice to each patient that such

19 hotline may be used to report inadequate staffing or

20 care.

21 “(g) PROTECTION FOR REPORTING.—

22 “(1) PROHIBITION ON RETALIATION OR DIS-

23 CRIMINATION.—A hospital shall not discriminate or

24 retaliate in any manner against any patient, em-

25 ployee, or contract employee of the hospital, or any

1 other individual, on the basis that such individual, in
 2 good faith, individually or in conjunction with an-
 3 other person or persons, has presented a grievance
 4 or complaint, or has initiated or cooperated in any
 5 investigation or proceeding of any governmental en-
 6 tity, regulatory agency, or private accreditation
 7 body, made a civil claim or demand, or filed an ac-
 8 tion relating to the care, services, or conditions of
 9 the hospital or of any affiliated or related facilities.

10 “(2) GOOD FAITH DEFINED.—For purposes of
 11 this subsection, an individual shall be deemed to be
 12 acting in good faith if the individual reasonably be-
 13 lieves—

14 “(A) the information reported or disclosed
 15 is true; and

16 “(B) a violation of this title has occurred
 17 or may occur.

18 “(h) PROHIBITION ON INTERFERENCE WITH
 19 RIGHTS.—

20 “(1) EXERCISE OF RIGHTS.—It shall be unlaw-
 21 ful for any hospital to—

22 “(A) interfere with, restrain, or deny the
 23 exercise, or attempt to exercise, by any person
 24 of any right provided or protected under this
 25 title; or

1 “(B) coerce or intimidate any person re-
2 garding the exercise or attempt to exercise such
3 right.

4 “(2) OPPOSITION TO UNLAWFUL POLICIES OR
5 PRACTICES.—It shall be unlawful for any hospital to
6 discriminate or retaliate against any person for op-
7 posing any hospital policy, practice, or actions which
8 are alleged to violate, breach, or fail to comply with
9 any provision of this title.

10 “(3) PROHIBITION ON INTERFERENCE WITH
11 PROTECTED COMMUNICATIONS.—A hospital (or an
12 individual representing a hospital) shall not make,
13 adopt, or enforce any rule, regulation, policy, or
14 practice which in any manner directly or indirectly
15 prohibits, impedes, or discourages a direct care reg-
16 istered nurse from, or intimidates, coerces, or in-
17 duces a direct care registered nurse regarding, en-
18 gaging in free speech activities or disclosing informa-
19 tion as provided under this title.

20 “(4) PROHIBITION ON INTERFERENCE WITH
21 COLLECTIVE ACTION.—A hospital (or an individual
22 representing a hospital) shall not in any way inter-
23 fere with the rights of nurses to organize, bargain
24 collectively, and engage in concerted activity under

1 section 7 of the National Labor Relations Act (29
2 U.S.C. 157).

3 “(i) NOTICE.—A hospital shall post in an appropriate
4 location in each unit a conspicuous notice in a form speci-
5 fied by the Secretary that—

6 “(1) explains the rights of nurses, patients, and
7 other individuals under this section;

8 “(2) includes a statement that a nurse, patient,
9 or other individual may file a complaint with the
10 Secretary against a hospital that violates the provi-
11 sions of this title; and

12 “(3) provides instructions on how to file a com-
13 plaint under paragraph (2).

14 “(j) EFFECTIVE DATES.—

15 “(1) REFUSAL; RETALIATION; CAUSE OF AC-
16 TION.—

17 “(A) IN GENERAL.—Subsections (b)
18 through (d) shall apply to refusals occurring on
19 or after the effective date of the provision to
20 which the refusal relates.

21 “(B) EXCEPTION.—Subsection (b)(2) shall
22 not apply to refusals in any hospital before the
23 requirements of section 3101(a) apply to that
24 hospital.

1 “(2) PROTECTIONS FOR REPORTING.—Sub-
 2 section (g)(1) shall apply to actions occurring on or
 3 after the effective date of the provision to which the
 4 violation relates, except that such subsection shall
 5 apply to initiation, cooperation, or participation in
 6 an investigation or proceeding on or after the date
 7 of enactment of this title.

8 “(3) NOTICE.—Subsection (i) shall take effect
 9 18 months after the date of enactment of this title.

10 **“SEC. 3106. ENFORCEMENT.**

11 “(a) IN GENERAL.—The Secretary shall enforce the
 12 requirements and prohibitions of this title in accordance
 13 with this section.

14 “(b) PROCEDURES FOR RECEIVING AND INVES-
 15 TIGATING COMPLAINTS.—The Secretary shall establish
 16 procedures under which—

17 “(1) any person may file a complaint alleging
 18 that a hospital has violated a requirement or a pro-
 19 hibition of this title; and

20 “(2) such complaints shall be investigated by
 21 the Secretary.

22 “(c) REMEDIES.—If the Secretary determines that a
 23 hospital has violated a requirement of this title, the Sec-
 24 retary—

1 “(1) shall require the facility to establish a cor-
 2 rective action plan to prevent the recurrence of such
 3 violation; and

4 “(2) may impose civil money penalties, as de-
 5 scribed in subsection (d).

6 “(d) CIVIL PENALTIES.—

7 “(1) IN GENERAL.—In addition to any other
 8 penalties prescribed by law, the Secretary may im-
 9 pose civil penalties as follows:

10 “(A) HOSPITAL LIABILITY.—The Secretary
 11 may impose on a hospital found to be in viola-
 12 tion of this title, a civil money penalty of not
 13 more than \$25,000 for each knowing violation
 14 of a requirement of this title, except that the
 15 Secretary shall impose a civil money penalty of
 16 more than \$25,000 for each such violation in
 17 the case of a participating hospital that the
 18 Secretary determines has a pattern or practice
 19 of such violations (with the amount of such ad-
 20 ditional penalties being determined in accord-
 21 ance with a schedule or methodology specified
 22 in regulations).

23 “(B) INDIVIDUAL LIABILITY.—The Sec-
 24 retary may impose on an individual who—

1 “(i) is employed by a hospital found
2 by the Secretary to have violated a require-
3 ment of this title; and

4 “(ii) willfully violates this title,
5 a civil money penalty of not more than \$20,000
6 for each such violation.

7 “(2) PROCEDURES.—The provisions of section
8 1128A of the Social Security Act (other than sub-
9 sections (a) and (b)) shall apply to a civil money
10 penalty under this paragraph in the same manner as
11 such provisions apply to a penalty or proceeding
12 under such section 1128A.

13 “(e) PUBLIC NOTICE OF VIOLATIONS.—

14 “(1) INTERNET WEBSITE.—The Secretary shall
15 publish on the Internet website of the Department
16 of Health and Human Services the names of partici-
17 pating hospitals on which civil money penalties have
18 been imposed under this subsection, the violation for
19 which such penalty was imposed, and such addi-
20 tional information as the Secretary determines ap-
21 propriate.

22 “(2) CHANGE OF OWNERSHIP.—With respect to
23 a participating hospital that had a change in owner-
24 ship, as determined by the Secretary, penalties im-
25 posed on the hospital while under previous owner-

1 ship shall no longer be published by the Secretary of
 2 such Internet website after the 1-year period begin-
 3 ning on the date of change in ownership.

4 “(f) OFFSET.—Funds collected by the Secretary
 5 under this paragraph shall be used to offset the costs of
 6 enforcing this title.

7 **“SEC. 3107. DEFINITIONS.**

8 “For purposes of this title:

9 “(1) ACUITY SYSTEM.—The term ‘acuity sys-
 10 tem’ means an established measurement tool that—

11 “(A) predicts nursing care requirements
 12 for individual patients based on severity of pa-
 13 tient illness, need for specialized equipment and
 14 technology, intensity of nursing interventions
 15 required, and the complexity of clinical nursing
 16 judgment needed to design, implement, and
 17 evaluate the patient’s nursing care plan;

18 “(B) details the amount of nursing care
 19 needed, both in number of nurses and in skill
 20 mix of nursing personnel required, on a daily
 21 basis, for each patient in a nursing department
 22 or unit;

23 “(C) takes into consideration the patient
 24 care services provided not only by registered

1 nurses but also by direct care licensed practical
2 nurses and other health care personnel; and

3 “(D) is stated in terms that can be readily
4 used and understood by nurses.

5 “(2) DIRECT CARE LICENSED PRACTICAL
6 NURSE.—The term ‘direct care licensed practical
7 nurse’ means an individual who has been granted a
8 license by at least 1 State to practice as a licensed
9 practical nurse or a licensed vocational nurse and
10 who provides bedside care for 1 or more patients.

11 “(3) NURSE.—The term ‘nurse’ means any di-
12 rect care registered nurse or direct care licensed
13 practical nurse (as the case may be), regardless of
14 whether or not the nurse is an employee.

15 “(4) DIRECT CARE REGISTERED NURSE.—The
16 term ‘direct care registered nurse’ means an indi-
17 vidual who has been granted a license by at least 1
18 State to practice as a registered nurse and who pro-
19 vides bedside care for 1 or more patients.

20 “(5) EMPLOYMENT.—The term ‘employment’
21 includes the provision of services under a contract or
22 other arrangement.

23 “(6) HOSPITAL.—The term ‘hospital’ has the
24 meaning given that term in section 1861(e) of the

1 Social Security Act and includes a long-term care
2 hospital, as defined in section 1861(ccc) of such Act.

3 “(7) STAFFING PLAN.—The term ‘staffing plan’
4 means a staffing plan required under section 3101.

5 “(8) DECLARED STATE OF EMERGENCY.—The
6 term ‘declared state of emergency’ means a state of
7 emergency that is an unpredictable or unavoidable
8 occurrence at an unscheduled or unpredictable inter-
9 val, relating to health care delivery and requiring
10 immediate medical interventions and care, that has
11 been declared by the Federal Government or the
12 head of the appropriate State or local governmental
13 agency having authority to declare that the State,
14 county, municipality, or locality is in a state of
15 emergency, but such term does not include a state
16 of emergency that results from a labor dispute in the
17 health care industry or consistent understaffing.

18 **“SEC. 3108. RULE OF CONSTRUCTION.**

19 “Nothing in this title shall be construed to authorize
20 disclosure of private and confidential patient information,
21 except in the case where such disclosure is otherwise re-
22 quired by law, compelled by proper legal process, con-
23 sented to by the patient, provided in confidence to regu-
24 latory or accreditation agencies or other government enti-
25 ties for investigatory purposes, or provided pursuant to

1 formal or informal complaints of unlawful or improper
2 practices for purposes of achieving corrective and remedial
3 action.”.

4 (b) RECOMMENDATIONS TO CONGRESS.—Not later
5 than 1 year after the date of enactment of this Act, the
6 Secretary of Health and Human Services shall submit to
7 Congress a report containing recommendations for ensur-
8 ing that sufficient numbers of nurses are available to meet
9 the requirements imposed by title XXXI of the Public
10 Health Service Act, as added by subsection (a).

11 **SEC. 3. FEDERAL SAFE PATIENT HANDLING STANDARD.**

12 (a) IN GENERAL.—Not later than 1 year after the
13 date of enactment of this Act, the Secretary of Labor, act-
14 ing through the Director of Occupational Safety and
15 Health Administration, shall establish a Federal Safe Pa-
16 tient Handling Standard, consistent with section 6 of the
17 Occupational Safety and Health Act of 1970 (29 U.S.C.
18 655) to prevent musculoskeletal disorders for direct care
19 registered nurses and other health care providers working
20 in health care facilities.

21 (b) DEVELOPMENT OF STANDARD.—In developing
22 the standard under subsection (a), the Secretary shall so-
23 licit input from direct care registered nurses and organiza-
24 tions representing direct care registered nurses in imple-
25 menting the standard.

1 (c) REQUIREMENTS.—The standard promulgated
2 under subsection (a) shall include—

3 (1) a zero lift policy;

4 (2) a musculoskeletal injury prevention plan,
5 which shall include hazard identification and risk as-
6 sessments in relation to patient care duties and pa-
7 tient handling;

8 (3) a program to identify problems and solu-
9 tions regarding safe patient handling;

10 (4) a system to report, track, and analyze
11 trends in injuries, as well as make injury data avail-
12 able to the public;

13 (5) training for staff, including interactive
14 classroom-based and hands-on training by a knowl-
15 edgeable person or staff, on safe patient handling
16 policies, equipment, and devices at least on an an-
17 nual basis, which shall include training on hazard
18 identification, assessment, and control of musculo-
19 skeletal hazards in patient care areas; and

20 (6) annual evaluations of safe patient handling
21 efforts, as well as new technology, handling proce-
22 dures, and engineering controls.

23 (d) COMPLIANCE WITH THE STANDARD.—The Sec-
24 retary of Labor shall require—

1 (1) all health care facilities to comply with the
2 standard developed under subsection (a); and

3 (2) health care facilities to purchase, use, and
4 maintain safe lift mechanical devices.

5 (e) SAFE PATIENT HANDLING PLAN.—In accordance
6 with the standard developed under subsection (a), and not
7 later than 180 days after such standard is published,
8 health care facilities shall develop and implement a safe
9 patient handling plan that—

10 (1) provides adequate, appropriate, and quality
11 delivery of health care services that protects patient
12 safety and prevents musculoskeletal disorders for di-
13 rect care registered nurses and other health care
14 providers;

15 (2) is consistent with the requirements of the
16 Federal Safe Patient Handling Standard;

17 (3) provides for input by direct care registered
18 nurses and organizations representing direct care
19 registered nurses in implementing the plan; and

20 (4) ensures that safe lifting mechanical devices
21 shall only be used by direct care registered nurses
22 and other health care providers.

23 (f) DEFINITIONS.—In this section—

24 (1) the term “lift team” means employees of a
25 hospital who are specially trained to handle patient

lifts, repositions, and transfers using patient transfer devices or lifting devices as appropriate for the specific patient, based on a needs assessment of the individual hospital employer; and

(2) the term “zero lift policy” means replacing unassisted manual lifting, repositioning, and transferring of patients with the use of patient transfer devices, lifting devices, and lift teams. Such term does not require the use of patient transfer or lifting devices when the lift, reposition, and transfer needs assessment indicates it is safe for the patient and the employee to use manual lifting, repositioning, and transferring techniques.

SEC. 4. PAYMENT ADJUSTMENT FOR HOSPITALS UNDER THE MEDICARE PROGRAM BASED ON ADDITIONAL COSTS OF COMPLYING WITH CERTAIN REQUIREMENTS.

Section 1886 of the Social Security Act (42 U.S.C. 1395ww), as amended by section 4102 of the HITECH Act (Public Law 111–5), is amended by adding at the end the following new subsection:

“(o) ADJUSTMENT BASED ON ADDITIONAL COSTS OF COMPLYING WITH CERTAIN REQUIREMENTS.—

“(1) IN GENERAL.—With respect to inpatient hospital services furnished by a subsection (d) hos-

1 pital during a fiscal year (beginning with fiscal year
 2 2010), in addition to the amount otherwise paid
 3 under this section, there shall also be paid to the
 4 subsection (d) hospital, from the Federal Hospital
 5 Insurance Trust Fund established under section
 6 1817, an amount equal to the applicable amount
 7 specified in paragraph (2) for the subsection (d) hos-
 8 pital for the fiscal year.

9 “(2) APPLICABLE AMOUNT.—The applicable
 10 amount specified in this paragraph for a subsection
 11 (d) hospital for a fiscal year is equal to the quotient
 12 of—

13 “(A) the total amount of additional costs
 14 incurred by the hospital in providing inpatient
 15 hospital services to beneficiaries during the fis-
 16 cal year that are attributable to compliance
 17 with the requirements under sections 3101,
 18 3102, and 3103 of the Public Health Services
 19 Act (as estimated by the Secretary, taking into
 20 account recommendations contained in the re-
 21 port under paragraph (3)); and

22 “(B) the total number of discharges during
 23 the fiscal year (as estimated by the Secretary).

24 “(3) MEDICARE PAYMENT ADVISORY COMMIS-
 25 SION REPORT.—Not later than 2 years after the

1 date of the enactment of this subsection, the Medi-
 2 care Payment Advisory Commission shall submit to
 3 Congress and the Secretary a report containing an
 4 estimate of the total costs to and savings for sub-
 5 section (d) hospitals during a fiscal year that are at-
 6 tributable to compliance with the requirements
 7 under sections 3101, 3102, and 3103 of the Public
 8 Health Service Act, including recommendations re-
 9 garding the adjustment in payments to such hos-
 10 pitals under this subsection, together with rec-
 11 ommendations for such legislation and administra-
 12 tive action as the Commission determines appro-
 13 priate.”.

14 **SEC. 5. ENFORCEMENT OF REQUIREMENTS THROUGH FED-**
 15 **ERAL PROGRAMS.**

16 (a) **MEDICARE PROGRAM.**—Section 1866(a)(1) of the
 17 Social Security Act (42 U.S.C. 1395cc(a)(1)) is amend-
 18 ed—

19 (1) by striking “and” at the end of subpara-
 20 graph (U);

21 (2) by striking the period at the end of sub-
 22 paragraph (V) and inserting “, and”; and

23 (3) by inserting after subparagraph (V) the fol-
 24 lowing:

1 “(W) in the case of a hospital, to be subject to
 2 the provisions of title XXXI of the Public Health
 3 Service Act.”.

4 (b) MEDICAID PROGRAM.—The first sentence of sec-
 5 tion 1902(a) of the Social Security Act (42 U.S.C.
 6 1396(a)), as amended by section 5006(e)(2)(A) of Divi-
 7 sion B of the American Recovery and Reinvestment Act
 8 of 2009 (Public Law 111–5), is amended—

9 (1) by striking “and” at the end of paragraph
 10 (72);

11 (2) by striking the period at the end of para-
 12 graph (73) and inserting “; and”; and

13 (3) by inserting after paragraph (73) the fol-
 14 lowing new paragraph:

15 “(74) provide that any hospital receiving pay-
 16 ments under such plan shall be subject to the provi-
 17 sions of title XXXI of the Public Health Service
 18 Act.”.

19 **SEC. 6. REGISTERED NURSE WORKFORCE INITIATIVE.**

20 Title VIII of the Public Health Service Act (42
 21 U.S.C. 296 et seq.) is amended by adding at the end the
 22 following:

1 **“PART J—REGISTERED NURSE WORKFORCE**
2 **INITIATIVE**

3 **“SEC. 860. REGISTERED NURSE WORKFORCE INITIATIVE.**

4 “(a) ESTABLISHMENT.—The Secretary, acting
5 through the Administrator of the Health Resources and
6 Services Administration, shall carry out a Registered
7 Nurse Workforce Initiative (referred to in this part as the
8 ‘RNWI’) to ensure that there is an adequate number of
9 registered nurses and to reduce critical workforce short-
10 ages in hospitals.

11 “(b) PURPOSES.—The purposes of the RNWI are
12 to—

13 “(1) achieve short-term mitigation and remedy
14 of the nationwide nursing shortage; and

15 “(2) establish and maintain the necessary edu-
16 cational system foundations and institutional in-
17 volvement to ensure sufficient labor supply and labor
18 market stability essential to ensuring safe and com-
19 petent hospital nursing care on an ongoing basis.

20 “(c) DURATION.—The RNWI is established as a 5-
21 year program for the purpose of adding new registered
22 nurses to the workforce, and may be extended beyond the
23 initial 5-year period, if the Secretary determines appro-
24 priate.

1 **“SEC. 861. EDUCATIONAL ASSISTANCE BENEFITS.**

2 “(a) GRANTS FOR ASSOCIATE AND BACCALAUREATE
3 DEGREE PROGRAMS.—

4 “(1) BASIC EDUCATIONAL ASSISTANCE BENE-
5 FITS.—To address the critical shortage of direct
6 care registered nurses, the Secretary shall establish
7 a nursing educational assistance grant program for
8 eligible individuals who are accepted to, or are en-
9 rolled in, associate and baccalaureate degrees in
10 nursing programs, based on such individuals’ finan-
11 cial need, as determined by the Secretary.

12 “(2) SUPPLEMENTAL EDUCATIONAL ASSIST-
13 ANCE BENEFIT.—

14 “(A) BENEFITS.—Each individual awarded
15 a grant under this subsection shall receive—

16 “(i) nursing educational assistance to
17 help meet, in part, the annual expenses of
18 enrolling in and attending an associate or
19 a baccalaureate degree in nursing program;
20 and

21 “(ii) a monthly living stipend to help
22 meet the individual’s basic living expenses.

23 “(B) GRANT AMOUNTS.—The Secretary
24 shall determine the amounts awarded under
25 subparagraph (A) for each fiscal year, based

1 upon the cost of living and the cost of attending
2 a nursing program for such fiscal year.

3 “(3) ELIGIBILITY.—An individual desiring a
4 grant under this subsection shall—

5 “(A) be an individual who has been accept-
6 ed to an accredited nursing education program;

7 “(B) provide assurances that such indi-
8 vidual will work for a health care provider that
9 is eligible to receive national health service
10 corps professionals for a period of not less than
11 3 years, in a setting that the Secretary deter-
12 mines appropriate; and

13 “(C) submit to the Secretary an applica-
14 tion at such time, in such manner, and con-
15 taining such information as the Secretary may
16 require.

17 “(b) GRANTS FOR ADVANCE DEGREES IN NURS-
18 ING.—

19 “(1) IN GENERAL.—To address the critical
20 shortage of nurse educators holding master’s or doc-
21 toral degrees in nursing, as well as the lack of mas-
22 ter’s and doctoral nursing students, the Secretary
23 shall establish a program to award grants to eligible
24 individuals to assist such individuals in pursuing
25 graduate nursing degrees.

1 “(2) ELIGIBLE INDIVIDUALS.—An individual
2 desiring a grant under this section shall—

3 “(A) hold an unencumbered license as a
4 registered nurse;

5 “(B) be accepted into an accredited mas-
6 ter’s or doctorate degree program in nursing;

7 “(C) provide assurances that such indi-
8 vidual will work as a nurse educator at an ac-
9 credited nursing program for a period of 5
10 years after graduating from an accredited grad-
11 uate degree program in nursing; and

12 “(D) submit to the Secretary an applica-
13 tion at such time, in such manner, and con-
14 taining such information as the Secretary may
15 require.

16 “(c) REPAYMENT OBLIGATION.—A recipient of a
17 grant under this section who fails to meet the require-
18 ments of the grant, as described in this section or as speci-
19 fied by the Secretary, shall repay the Secretary all
20 amounts received through such grant, with interest.

21 **“SEC. 862. PRECEPTORSHIP AND MENTORSHIP DEM-**
22 **ONSTRATION PROJECTS.**

23 “(a) IN GENERAL.—The Secretary shall award
24 grants to eligible entities for the purpose of conducting
25 5-year nursing preceptorship and mentorship demonstra-

1 tion projects, designed to address nurse workforce short-
 2 ages and improve patient care by providing additional sup-
 3 port to nurses entering the workforce to promote the re-
 4 tention of nurses in the workforce.

5 “(b) ELIGIBLE ENTITIES.—An entity desiring a
 6 grant under this section shall—

7 “(1) be a hospital; and

8 “(2) submit an application to the Secretary at
 9 such time, in such manner, and containing such in-
 10 formation as the Secretary may require.

11 “(c) PRIORITY.—In awarding grants under this sec-
 12 tion, the Secretary shall give priority to hospitals that
 13 have a critical shortage of nurses, as determined by the
 14 Secretary.

15 “(d) PRECEPTORSHIP PROGRAM.—

16 “(1) IN GENERAL.—The preceptorship program
 17 shall provide—

18 “(A) a period of practical experience and
 19 training for nursing students, by providing clin-
 20 ical supervision by a direct care registered
 21 nurse expert or specialist in a particular field;
 22 or

23 “(B) a period of orientation for newly-
 24 graduated or newly hired direct care registered
 25 nurses.

1 “(2) PURPOSE.—The purpose of the preceptor-
 2 ship program is to establish a period of practical and
 3 clinical experiences and training for nursing stu-
 4 dents, newly hired nurses and recent graduates of a
 5 direct care degree program for registered nurses.

6 “(e) MENTORSHIP PROGRAM.—

7 “(1) IN GENERAL.—The mentorship program
 8 shall match newly hired direct care registered nurses
 9 (referred to in this subsection as the ‘mentees’) with
 10 experienced direct care registered nurses, who shall
 11 serve as advocates and role models and help the
 12 mentees grow professionally, feel supported, and
 13 adapt to the culture of the acute care hospital. Men-
 14 tors shall provide personal and career support in the
 15 workplace.

16 “(2) PURPOSE.—The purpose of the mentorship
 17 program is to assist new or transitional direct care
 18 registered nurses to succeed in making their own
 19 contributions to the care of patients and to the nurs-
 20 ing profession.

21 “(f) REPORT.—Each recipient of a grant under this
 22 section, at the end of such recipient’s 5-year demonstra-
 23 tion project, shall submit to the Secretary a report con-
 24 taining an evaluation of the effect of the demonstration

1 project on nurse retention and patient care in the hospital
2 for which such grant was awarded.

3 **“SEC. 863. AUTHORIZATION OF APPROPRIATIONS.**

4 “To carry out this part, there are authorized to be
5 appropriated such funds as may be necessary for fiscal
6 years 2010 through 2014.”.

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